

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

ORDER

**Vipin Gaur & Anr. vs. State of Rajasthan & Anr.
(S.B.C.Writ Petition No.5448/03)**

Date of Order :- 6th October, 2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.B.K.Vyas,Advocate for the petitioner.

Mr.Rameshwar Dave,Dy.Government Advocate for the
respondent.

In this writ petition, petitioners have challenged the the advertisement dated 31.7.2003 on the ground of not mentioning the science subject alongwith the qualification of Senior Higher Secondary although they did so in the previous advertisement.

According to the petitioners they have passed Diploma in Nursing Examination Board, Bangalore from Karnataka and a copy of the mark sheet dated 25.11.2002 has

been placed on record. They were thereafter registered with the Rajasthan Nursing Council, Jaipur on 30.6.2003. According to them, appointments on the post of Nurse Grade-II were made on the basis of registration number in the ascending order. The respondents issued an advertisement dated 27.2.1996 in which criteria fixed for appointment provided that the candidates would have passed Ist year T.D.C. or Senior Higher Secondary in subjects of Physics, Chemistry and Biology alongwith Diploma in Nursing Course. Thereafter again the vacancies of Nurse Grade-II were advertised on 19.2.2003 with the similar qualifications. Now the respondents have come out with yet another advertisement dated 31.7.2003 in which criteria of preparation of merit list has been changed with 50% weightage being awarded to the marks of Senior Secondary Examination and remaining 50% being awarded to the general category. It is this changed criteria which petitioners have challenged and have prayed that advertisement dated 31.7.2003 be quashed and set aside.

The respondents have contested the matter and

have pleaded in the reply that the recruitment on the post of Nurse Grade-II was being made strictly in accordance with the provisions contained in the Rajasthan Medical and Health Subordinate Service Rules, 1965 (for short "Rules of 1965"). According to the respondents, reference to advertisement dated 27.2.1996 was misconceived because this advertisement was issued for inviting applications for admission in General Nursing Course and not for the recruitment. So far as advertisement dated 19.2.2003 is concerned, this advertisement was quashed by this Court in S.B.C. Writ Petition No. 836/03 with liberty to the respondents to issue fresh advertisement in accordance with the Rules of 1965. Accordingly a fresh advertisement was later issued on 31.7.2003. The respondents have submitted that petitioner applied in response to the advertisement dated 31.7.2003. He being a candidate belonging to general category, marks secured by him were 59.152% whereas the last candidate appointed in general category secured 69.154%. All the selected candidates have been appointed by order dated 17.9.2003 and joined.

I have heard Mr.B.K.Vyas, learned counsel for the petitioner and Mr.Rameshwar Dave, learned Dy.Government Advocate for the respondents and perused the record.

Recruitment on the post of Nurse Grade-II can be made in accordance with the Rules of 1965. There was no provision in the rules for giving any preference batchwise or preference on the basis of date of registration with the Rajasthan Nursing Council. So far as criteria for preparation of merit is concerned, 50% weightage given to the marks secured in the Senior Higher Secondary and remaining 50% being given to the general category cannot be said to be unreasonable or illegal. It is an equitable criteria wherein checks and balances have been introduced with no tilt towards either the nursing training course or the qualifying examination of senior higher secondary. Equal weightage to both having been given, the criteria seeks to exclude the possibility of any undue leanings in favour of either of the qualifications. The petitioners having applied against the advertisement dated 31.7.2003 and failed to come within the merit, would be estopped from challenging

the advertisement itself. The last candidate appointed in general category who secured 69.154% marks had much higher marks than the petitioners.

In the result, I do not find any merit in this writ petition. The same is accordingly dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.